

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-077-00688R

Parcel No. 120/02640-622-000

Carl Soto,

Appellant,

v.

Polk County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 4, 2016. Carl Soto was self-represented. Assistant County Attorney Christina Gonzalez represented the Polk County Board of Review.

Soto is the owner of a two-story residential dwelling located at 2515 E Havens Avenue, Des Moines, Iowa. The subject property has 1532 total square feet of living area, a full, unfinished walkout basement, and a 670 square-foot attached garage constructed in 2004. The property is also improved by an open porch, deck, and patio. The dwelling is listed in normal condition and with good quality construction (Grade 3+05). The site is 0.587-acres.

The property's January 1, 2015, assessment was \$180,900, allocated as \$32,400 in land value and \$148,500 to improvement value. Soto's protest to the Board of Review claimed the property is not assessable, is exempt from taxes, or is misclassified under Iowa Code section 441.37(1)(a)(1)(c).

The Board of Review denied the petition.

Soto then appealed to PAAB. He believes the subject property's correct assessment is \$164,100.

Findings of Fact

Soto's appeal focuses on the value of his land. No evidence was offered concerning the value of his dwelling. He testified that he is unable to use the rear portion of his backyard because of a ditch and creek cutting off access. He also claims brush and trees prevent him from reaching this part of his lot. Soto submitted photographs, which demonstrate the vegetation and creek area. He estimates the creek is 10-12 yards wide and the ditch has a 30% to 40% incline. He reports his neighbor had a culvert built and covered with dirt, and others have constructed bridges to provide access to the back portions of their lots. They are now able to use the full extent of their yards.

Soto seeks his land value be reduced by a percentage representing the inaccessible portion of the yard (52%) and believes the assessment should be reduced by roughly \$15,600.

The Board of Review appraiser reported that Soto's yard has a 380-foot depth. In his opinion, with such a deep lot, the creek does not impede the use and enjoyment of the residence.

We note that Soto's land is assessed at \$1.27 per-square-foot. Neighboring properties, which also have the creek dividing their backyards, have assessments that range from \$1.25 to \$1.92 per-square-foot with a median of \$1.34 per-square-foot. (Exhibit B). Soto's assessment is below the median and at the low end of the range.

Amy Rasmussen, Director of Litigation for the Assessor's Office, testified on behalf of the Board of Review. She reported there are no exemptions given to residential owners due to waterways on their property. Rasmussen indicated that Soto could do the same as his neighbors and construct a culvert or bridge to reach the rear portion of his backyard. In her opinion, the portion of the backyard, closest to the dwelling was the most valuable part and a deduction of over 50% over-estimates any reduction in value due to the creek.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). In this case, Duster did not shift the burden, and therefore, must prove the assessment is inequitable based upon a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Soto asserts a portion of his property is exempt or non-assessable under Iowa Code section 441.37(1)(a)(1)(c). In an exemption case, it is appropriate for the Appeal Board to "strictly construe a statute and any doubt about an exemption is resolved in favor of taxation." *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000). Iowa Code Chapter 427 sets forth the exemptions available to property owners. Soto has not shown any exemptions apply to his property.

Soto's claim is premised on his belief that the rear portion of his property is rendered valueless because of the accessibility issues. This is more akin to an

overassessment claim under section 441.37(1)(a)(1)(b). Even if he had properly raised an overassessment claim, we would likewise conclude that Soto had not shown the property to be overassessed. While it might be true that the market value of his property is impacted by the accessibility issue, we do not believe it makes that portion of the property completely valueless. Further, there was no evidence to show what impact, if any, that the accessibility issue has on his property's market value.

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Order

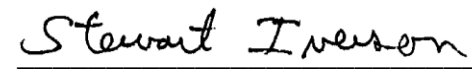
IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

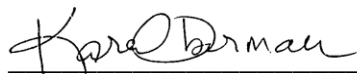
Dated this 9th day of March, 2016.



Jacqueline Rypma, Presiding Officer



Stewart Iverson, Board Chair



Karen Oberman, Board Member

Copies to:

Carl Soto

Christina Gonzalez